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LINDSEY ABRAMS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA—SAN JOSE DIVISION

LINDSEY ABRAMS, individually and on
behalf of a class of similarly situated
individuals,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation,

Defendant.

Case No. C 07-05378 PVT

DECLARATION OF JAY EDELSON IN
SUPPORT OF OPPOSITION TO FACEBOOK'S
APPLICATION FOR LEAVE TO CONDUCT
DISCOVERY

I, Jay Edelson, declare as follows:

1. I am a managing member of KamberEdelson, LLC and one of the attorneys for the plaintiff in this action. I have personal knowledge of all matters stated herein.

2. I have reviewed the declaration of Michael Rhodes dated May 28, 2008 and do not believe it fairly characterizes the facts.

1 3. As one example, Mr. Rhodes suggests that this case settled because of his efforts
2 alone and after only minimal work was done by plaintiff's counsel. Neither is correct. Myles
3 McGuire, a partner at my firm, and I spent considerable time investigating the facts of this case,
4 working with an expert witness, and (along with other attorneys at our firm) preparing a motion
5 for preliminary injunction which we shared with Facebook prior to discussing settlement.
6

7 4. Our settlement meetings were both substantive and contentious and consisted of
8 our essentially proving our case to Facebook's outside and in-house attorneys.

9 5. Mr. Rhodes is also incorrect when he says that the "parties were not able to reach
10 agreement as to the amount of attorneys' fees." In fact, Facebook refused to discuss fees at any
11 point, stating that the only agreement it would consider was leaving the decision to the court.
12 We acquiesced.
13

14 6. Mr. Rhodes was very active in drafting the settlement agreement, which makes
15 clear that the fees are to be based on the value of the settlement to the public in general and not on
16 a lodestar basis. He, himself, included language forgoing Facebook's right to appeal the court's
17 decision and carefully negotiated the language entitling plaintiff – and only plaintiff – to
18 discovery on the issue of fees.

19 7. Facebook never served discovery on plaintiff nor did it even suggest it was
20 interested in doing so until May 20, 2008. This is so even though Facebook knew (from
21 plaintiff's draft motion for a preliminary injunction) prior to the settlement being reached the
22 identity of at least one of plaintiff's expert witnesses.
23

24 8. On May 20, 2008, soon after receiving plaintiff's fee petition, Facebook's
25 attorneys explained that they were calling to inquire as to what our position would be with respect
26 to discovery. Facebook refrained from making any specific inquiry, and instead merely asked
27
28

1 Plaintiff's counsel whether we would be willing to forward billing records and make our experts
2 available for depositions.

3 9. I explained that the scope of discovery was covered in the settlement agreement
4 and that we had no interest in renegotiating that document. I reiterated plaintiff's oft-stated
5 position that we were open to negotiate the resolution of the fee issue, which Facebook has
6 ignored.
7

8 10. Mr. Rhodes says that we refused to tell him our rates or the number of hours we
9 have in this case. That again is not so. As I explained to Mr. Rhodes in a subsequent phone call,
10 we would be inclined to produce such information on an informal basis, if it would – at the least –
11 put Facebook in a position to negotiate fees. Facebook never responded to my offer and, as has
12 been a consistent pattern in this litigation, has not responded to further phone calls I have made
13 regarding this issue.
14

15 I declare under the laws of the United States of America that the foregoing is true and
16 correct.
17

18
19 /s/ Jay Edelson
Jay Edelson

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